



# **Brahmayya Bulletin**

April 2016

## Editorial

“Change is inevitable and is the only thing in this world which is eternal”. The ever changing and dynamic nature of taxation laws in India have been eliciting thought-provoking consultations, negotiations, assessment and so on. Growing complications in taxation laws involving diverse understanding impels disagreements and motivates prospects for tax evasion. The advent of tremendous increase in capital mobility and cross border transactions, state-run tax laws have been abused to evade double taxation. This has been a matter of primary concern both for business enterprises engaged in the cross-border transactions and the tax administrations of the countries concerned.

Positive move in the Budget 2016-17 namely, the reduction in interest rate on delayed payment of indirect taxes while Amendment in CENVAT Credit Rules, 2004, which have always been vulnerable to disputes, would help in clarifying the correct position of law, thereby reducing litigation.

Further, it is a welcome that in a post Budget move, the Prime Minister and the Finance Minister have addressed the concerns of salaried class, wherein, in a bid to rationalize NPS, the settled position relating to tax exemption of PF and superannuation funds was disturbed.

Amid global economic volatility, India has admirably achieved a 7.6% GDP growth in the current fiscal. In this scenario, this budget will go a long way in harnessing the beehive of the country's growth and pollinate progress across all economic segments. Overall, it has lived up to the Government's motto of Growth and Development.

*Change is the end result of all true learning - Leo Buscaglia.*

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## Ministry of Corporate Affairs (MCA)

### Notification No. G.S.R. 404 (E) - Dated 6th April 2016

MCA has amended Schedule III of the Companies Act 2013 to incorporate the instructions pertaining to preparation of Balance Sheet and Statement of Profit and Loss in case of companies whose financial statements are drawn up in compliance of Companies (Indian Accounting Standards) Rules, 2015. Certain changes in the line items of the Balance Sheet and Statement of Profit and Loss have also been prescribed. Separate format for Statement for changes in equity has also been provided.

### Circular No. 03/2016 - Dated 12th April 2016

In view of the downtime faced, in the new e-forms filing system and based on representations received from various stakeholders, MCA has decided to relax the additional fees payable on e-forms which are due for filing by companies between 25th March, 2016 to 30th April, 2016 as a one time waiver. It is also clarified that if such due e-forms are filed after 10th May 2016, no such relaxation will be allowed.

### Circular No. 04/2016 - Dated 27th April 2016

MCA has clarified that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification i.e. accounting period commencing from 1st April 2016.

## Central Board of Direct Taxes (CBDT)

### Notification No. 4/2016 - Dated 6th April 2016

As per Rule 114G(10)(a) of the Income-tax Rules, 1962, every reporting financial institution shall communicate to the Principal Director General of Income-tax (Systems) the name, designation and communication details of the Designated Director and the Principal Officer. As per Rule 114G(9)(a), the statement referred to in Rule 114G(7) shall be furnished through online transmission of electronic data to a server designated for this purpose under the digital signature in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems). Further as per Rule 114G(9)(b), Principal Director General of Income Tax (Systems) shall specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies. In exercise of the powers delegated by the CBDT under sub-rule (9)(a) and 9(b) of Rule 114G, the Principal Director General of Income-tax (Systems) has laid down the following procedures:

- (a) Generation of ITDREIN
- (b) Submission of details of reporting entity
- (c) Registration of designated director and principal officer
- (d) Submission of Form 61B
- (e) Submission of Nil statement
- (f) Existing registered entities

### Notification No. 5/2016 - Dated 6th April 2016

The Principal Director General of Income-tax (Systems) has laid down the procedures, data structure and standard of Electronic Verification Code (EVC) for new Form No. 35.

The manner of furnishing the new Form No. 35 has been prescribed by rule 45(2). Rule 45(5) empowers the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) to:

- (a) specify the procedure for electronic filing of Form No. 35 and documents;
- (b) specify the data structure, standard and manner of generation of electronic verification code referred to in rule 45(2) for the purpose of verification of person furnishing the said form; and
- (c) be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished.

### Notification No. 30/2016 - Dated 6th April 2016

- a) CBDT has inserted new Rule 26C in the Income tax Rules, 1962, with effect from 1st June, 2016, requiring furnishing of evidence of the claims by an employee to the person responsible for making payment under section 192(1) in Form No.12BB for the purpose of estimating his income or computing the TDS.
- b) Rule 30(2A) has been amended to increase the time limit for payment of tax deduction under section 194-IA to Government account from 7 days to 30 days from the end of the month in which deduction is made.
- c) Rule 31A requires every person responsible for deduction of tax under Chapter XVII-B to deliver,

quarterly statements to the Director General of Income-tax (Systems) or the person authorised by him within the due date for each quarter specified in Rule 31A(2).

- d) In the case of an office of the Government, where tax has been paid to the credit of the Central Government, without production of challan, Rule 30(4) and 37CA(3) now simply require submission of statement in Form 24G to the agency authorised by the Principal Director General of Income-tax (Systems) in respect of tax deducted/collected by the deductors/collectors and reported to him.

**Circular No. 9/2016 - Dated 26<sup>th</sup> April 2016**

CBDT clarifies, based on the Kerala High Court Judgement, in *Grihalaxmi Vision v. Addl. CIT that Assessing Officers (below the rank of Joint Commissioner of income-tax) have to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c).*

The Circular further clarifies that where any High Court decides this issue contrary then this circular shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee (CTC). The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

**Circular No. 10/2016 - Dated 26th April 2016**

The issue whether the limitation for imposition of penalty under sections 271D and 271E, is determined under section 275(1)(a) or section 275(1)(c), has given rise to considerable litigation. The Delhi High Court, in *CIT v. Worldwide Township Projects Ltd.*, has considered this issue and observed that is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS is not related to the income that may be assessed or finally adjudicated. In this view, section 275(1) (a) would not be applicable and the provisions of section 275(1)(c) would be attracted." The judgment has been accepted by the CBDT. In view of the above, it is a settled position that the period of limitation of penalty proceedings under section 271D and section 271E of the Act is governed by the provisions of section 275(1) (c).

Therefore, the limitation period for the imposition of penalty under these provisions would be the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a).

**Circular No. 11/2016 - Dated 26th April 2016**

The procedure for refund of tax deducted at source under section 195 to the person deducting the tax is set out in CBDT Circular No.7 /2007 dated 23rd October 2007, which states that no interest under section 244A is admissible on refunds to be granted in accordance with the circular or on the refunds already granted. The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Supreme Court of India, in *Tata Chemical Limited, Civil Appeal No. 6301 of 2011* vide order dated 26th February 2014, held that refund due and payable to the assessee is debt-owed and payable by the Revenue and the obligation to refund money received and retained without right implies and carries with it the right to interest. In view of the above judgment of the Apex Court, it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195, then it has to be refunded with interest under section 244A from the date of payment of such tax.

## Central Board of Excise and Customs (CBEC) – Central Excise

### Notification No. 23/2016 – Central Excise (N.T.) - Dated 1st April 2016

A manufacturer/provider of output service manufacturing/providing taxable as well as exempted goods/services may pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services subject to a maximum of the total credit available in the account of the assessee at the end of the period to which the payment relates.

Now, the Central Government vide the said Notification inserted an amendment to Rule 6(3) of CENVAT Credit Rules to provide that the cap on the said reversal required will be subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services take during that period.

Further, Rule 7B of CENVAT Credit Rules has also been amended to provide that for distribution of credit on inputs by warehouse of manufacturer, the manufacturer must receive inputs under cover of "Documents specified in Rule 9". Prior to this amendment, the warehouse could pass on credit of inputs received under cover of invoice issued under Central Excise Rules, 2002 only. With this amendment, credit can be passed even on imported inputs and inputs received from dealers.

### Notification No. 24/2016 – Central Excise (N.T.) - Dated 13th April 2016

CBEC vide the said Notification has provided following amendments in Rule 4(7) (Conditions for allowing CENVAT Credit) of CENVAT Credit Rules, 2004:

- The manufacturer or the service provider shall not take CENVAT credit after 1 year of the date of issuance of invoice/bill/challan except in case of services provided by Government, local authority or any other person by way of assignment of right to use any natural resource.

- CENVAT Credit of service tax shall be spread evenly over a period of 3 years on the one-time charges payable in full up front or in installments for the service of assignment of the right to use any natural resource by the Government, local authority or any other person. Earlier vide Notification No. 13/2016-Central Excise (N.T.) dated, March 01, 2016, the CENVAT Credit had to be spread over the period for which the right to use was assigned.

## Central Board of Excise and Customs (CBEC) – Service Tax

### Notification No. 22/2016 - Dated 13th April 2016

Central Government vide the said Notification has provided amendments in Mega Exemption by exempting certain list of services provided by government or a local authority.

### Notification No. 23/2016 - Dated 13th April 2016

The Service Tax Valuation Rules have been amended to provide for levy of service tax on interest chargeable on deferred payment, where payment for services provided by Government is allowed to be deferred on payment of interest or any other consideration.

### Notification No. 24/2016 - Dated 13th April 2016

The Point of Taxation Rules have been amended to provide that in case of services provided by the Government to any business entity, the point of taxation would be the earlier of the date on which any payment becomes due as specified in the invoice, bill, challan or any other document issued by the government, or the date of actual payment.

## Reserve Bank of India (RBI)

### FIDD.CO.Plan.BC.23/04.09.01/2015 -16 - Dated 7th April 2016

In line with the Government's decision to allow Dealing in Priority Sector Lending Certificates (PSLCs), RBI had released the guidelines of the said scheme. The purpose of the PSLCs is to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall and at the same time incentivize the surplus banks; thereby enhancing lending to the categories under priority sector. Various rules applicable to these PSLCs have also been provided.

### DBS.CO.PPD. BC.No.10/11.01.005/2015-16 - Dated 28th April 2016

RBI has advised that henceforth, the compliance to the Jilani Committee recommendations need not be reported to the Audit Committee Board. However, it has also directed Banks to ensure that compliance to these recommendations are complete and sustained and these recommendations are appropriately factored in the internal inspection/audit processes of banks and duly documented in their manual/instructions.

## **Foreign Exchange Management Act (FEMA)**

### **Notification No. FEMA 5(R)/2016-RB - Dated 1st April, 2016**

Vide this notification, the existing deposit regulation is repealed and replaced by the Foreign Exchange Management (Deposit) Regulations, 2016, which shall be applicable from 21st January 2016. These regulations specify Rules in regard to

- Restrictions on deposits between a person resident in India and a person resident outside India and certain exemptions
- Acceptance of deposits by an authorised dealer/ authorised bank from persons resident outside India
- Acceptance of deposits by persons other than authorised dealer/ authorised bank
- Other deposits made or held by authorised dealer

### **Notification No. FEMA 13(R)/2016-RB - Dated 1st April, 2016**

Vide this notification, the RBI makes the Foreign Exchange Management (Remittance of Assets) Regulations, 2016. These regulations specify Rules in regard to

- Prohibition on Remittance outside India of assets held in India
- Permission for remittance of assets in certain cases
- Permission to an Indian entity to remit funds in certain cases
- Permission for remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office)
- Reserve prior permission in certain cases Bank's

### **Notification No. FEMA 363(R)/2016-RB - Dated 28th April, 2016**

RBI has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 to facilitate provisions regarding Start up initiatives and funding by Foreign Venture Capital Investor (FVCI) registered with SEBI, which prescribes rules for investment, maintenance of accounts, transfer of investment and reporting by FVCI's.

### **A.P. (DIR Series) Circular No. 59 - Dated 13th April, 2016**

In terms of Regulation 3 of Notification No. FEMA 5(R)/2016-RB dated 1st April, 2016 no person resident in India shall accept deposit from, or make any deposit with, a person resident outside India. Under Section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a director in an Indian company is required to place a deposit with the said company. In this context, it has come to the notice of the Reserve Bank that there is ambiguity whether such deposits will require any specific approval from the RBI under Notification No. FEMA 5(R), in cases where the deposit is received from a person resident outside India. It is hereby clarified that such deposits with Indian companies in accordance with Section 160 of Companies Act, 2013 is a current account transaction and as such does not require any approval from RBI. Further, all refunds of such deposits, arising in the event of selection of the person as director or getting more than 25% votes, shall be treated similarly.

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